

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT

NO. 997

CONSOLIDATED RAIL CORPORATION

-VS-

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DOCKET NO. CRE-19994-D
CASE NO. 107

CLAIMANT: M.T. Donogue^{jr}

FOR THE CARRIER: S.R. Friedman, ~~Assistant~~ Director
Labor Relations

FOR THE ORGANIZATION: Robert Godwin, General Chairman,
BLE

NEUTRAL: Dr. James R. McDonnell

EMPLOYEE'S STATEMENT OF CLAIM

Appeal of Engineer M.T. Donogue 757231 from the discipline of 30 days actual suspension with time out held out of service to apply.

OUTLINE OF OFFENSE

Your failure in connection with the passing of DCS Station San, Lockport Branch, Sanborn, New York without proper authority at approximately 8:05 Am on January 25, 1999, when assigned as Engineer on Train UNS 13B on duty 10:15 PM, January 24, 1999 at Buffalo, New York.

FINDINGS OF THE BOARD

The Board, after hearing the whole record and all evidence finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by agreement and has jurisdiction of the parties, claim and subject matter which was held on May 18, 1999 in Jacksonville, Florida. The Board makes the following additional findings:

DECISION

The Organization raises a threshold question concerning Article G-M-11 - Discipline and Investigation, in particular (d) (1), and (e) (1), which say:

(d) (1) An engineer directed to attend a formal investigation to determine his responsibility, if any, in connection with an act or occurrence shall be notified in writing within 7 days from the date of the act or occurrence or in cases involving stealing or criminal offense within 7 days from the date the Corporation becomes aware of such act or occurrence. The notice shall contain:

- (A) The time, date and location where the formal investigation shall be held.
- (B) The date, approximate time and the location of the act or occurrence.

- (C) A description of the act or occurrence which is the subject of the investigation and rules which may be involved.
- (D) A statement that he may be represented by his duly accredited representative.
- (E) The identify of witnesses directed by the Corporation to attend.

(2) When a letter of complaint against an engineer is the basis for requiring him to attend the formal investigation, the engineer shall be furnished a copy of the written complaint together with the written notice for him to attend the investigation.

(e)(1) The investigation must be scheduled to begin within 7 days from the date the engineer received notice of the investigation.

The record shows that the Claimant was not notified of the investigation in a timely fashion. The Carrier's contention that this is a matter of a mis-addressed notice is unacceptable. Further, the Carrier's argument that the Claimant had been verbally notified by a Supervisor, will not wash.

The parties are obligated to carry out the provisions of the Agreement. In this case, the entire question of due process comes before the bar and must not be ignored or set aside by the parties, nor this Board.

The Board is unable to reach the merit of the offense. It is barred from doing so by the failure of the Carrier to live up to the provisions of the Agreement.

AWARD

Claim sustained.

The Claimant shall be made whole for all losses.

SR Friedman - DISSENT

S.R. Friedman, ~~Assistant~~ Director
Labor Relations

Robert W. Godwin

Robert Godwin, General Chairman
BLE

James R. McDonnell

Dr. James R. McDonnell
Neutral

October 22, 1999
Date

jdm